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No. 80-1925

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

UNITED TRANSPORTATION UNION,
Petitioner,

v.

LONG ISLAND RAILROAD COMPANY and
METROPOLITAN TRANSPORTATION AUTHORITY,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 15, 1981
CERTIORARI GRANTED JUNE 22, 1981

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 18-1925

UNITED TRANSPORTATION UNION,
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LONG ISLAND RAILROAD COMPANY and
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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

December 7, 1979—Plaintiff United Transportation Union's verified complaint for declaratory and injunctive relief filed in the U.S. District Court for the Eastern District of New York.

February 21, 1980—Defendants Long Island Railroad Company and Metropolitan Transportation Authority's Answer filed.

February 28, 1980—By Plaintiff's motion, Order to Show Cause for why summary judgment should not be granted, was filed, signed by Chief Judge Mishler (dated February 27, 1980).

March 4, 1980—Hearing before Chief Judge Mishler on plaintiff's motion for summary judgment. Summary judgment granted for plaintiff. Judgment filed.

March 7, 1980—Memorandum of Decision (dated March 5, 1980) by Chief Judge Mishler filed.

March 11, 1980—Defendants filed notice of appeal. Record on appeal certified and mailed to the Court of Appeals for the Second Circuit.

April 18, 1980—Case argued before Mulligan, C.J., Spears, and Sweet, D.J.

September 15, 1980—Judgment reversed and filed.

September 26, 1980—Appellee United Transportation Union filed motion for stay of mandate pending application to the Supreme Court for writ of certiorari.

October 3, 1980—Appellee's motion for stay of mandate granted.

October 14, 1980—Appellee's petition for rehearing with a suggestion for rehearing en banc filed.

December 17, 1980—Order filed denying appellee's petition for rehearing with a suggestion for rehearing en banc.

December 22, 1980—Appellee filed motion for order staying issuance of mandate.

February 13, 1981—Order filed granting appellee's motion for stay of mandate.

March 4, 1981—Appellee filed motion for order staying issuance of mandate.

March 6, 1981—Order filed granting appellee's motion for stay of mandate.

April 13, 1981—Appellee filed motion for order staying issuance of mandate.

April 27, 1981—Order filed granting appellee's motion for stay of mandate.

May 26, 1981—Notice of filing petition for writ of certiorari filed.

June 29, 1981—Certified copy of order of Supreme Court granting petition for writ of certiorari filed.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Case No. 79C3118

UNITED TRANSPORTATION UNION
14600 Detroit Avenue
Cleveland, Ohio 44107

Plaintiff,

vs.

LONG ISLAND RAIL ROAD COMPANY
Jamaica Station
Jamaica, New York 11435,

and

METROPOLITAN TRANSPORTATION AUTHORITY
OF NEW YORK
1700 Broadway
New York, New York 10019

Defendants.

VERIFIED COMPLAINT OF UNITED TRANSPORTATION UNION FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

This is an action by the United Transportation Union (hereinafter referred to as "UTU") against the Long Island Rail Road Company (hereinafter referred to as the "Long Island") and the Metropolitan Transportation Authority of New York (hereinafter referred to as "MTA") for declaratory and injunctive relief arising out of a dispute governed by the provisions of the Railway Labor Act, as amended, (45 U.S.C. §§ 151 *et seq.*). The plaintiff's causes of action against the defendant Long Island are set forth in two counts as follows:

JURISDICTION AND VENUE

1. This is an action for declaratory and injunctive relief against defendant Long Island and MTA arising

out of a dispute governed by the provisions of the Railway Labor Act (45 U.S.C. §§ 151 *et seq.*). This Court has jurisdiction of the action under the provisions of Title 28 of the United States Code, Sections 1331 and 1337. The action is one arising under the laws of the United States within the meaning of § 1331(a) and the matter in controversy exceeds the value of Ten Thousand Dollars ($10,000), exclusive of interest and costs. The action also arises under an Act of Congress regulating commerce pursuant to which United States District Courts have original jurisdiction pursuant to the provisions of § 1337. This Court has jurisdiction to grant plaintiff declaratory relief pursuant to the provisions of Title 28, § 2201, of the United States Code (28 U.S.C. § 2201) and also has jurisdiction to grant further necessary or proper relief pursuant to the provisions of Title 28, § 2202, of the United States Code (28 U.S.C. § 2202). This Court also has jurisdiction to grant plaintiffs prayers for relief pursuant to Title 28 of the United States Code, § 1651, which authorizes a United States District Court to issue all writs necessary or appropriate in aid of its jurisdiction and agreeable to the usages and principles of law.

2. Venue properly resides in this judicial district pursuant to the provisions of § 1391(c) of the United States Code. The Long Island maintains its principal place of business in this judicial district, is licensed to do business and is, in fact, doing business within this judicial district. MTA is the sole owner of the Long Island and doing business within this judicial district.

THE PARTIES

3. Plaintiff UTU is an unincorporated labor organization, national in scope, representing the craft or class of conductors, brakemen, switchmen, firemen, motormen, collectors and related employees comprising the train crew on virtually every railroad in the United States,

including the Long Island, pursuant to the provisions of the Railway Labor Act. UTU has been certified and recognized by the National Mediation Board as the exclusive collective-bargaining representative under the Railway Labor Act for those employees within the said craft or class employed by the Long Island. UTU maintains its headquarters at 14600 Detroit Avenue, Cleveland, Ohio 44107, and represents employees of the Long Island who perform service for the Long Island within this judicial district. UTU is a party to collective-bargaining agreements with the Long Island governing rates of pay, rules and working conditions of Long Island employees represented by UTU which were negotiated and are maintained in accordance with the requirements of the Railway Labor Act.

4. Defendant Long Island is a domestic corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business at Jamaica Station, Jamaica, in the Borough of Queens, City and State of New York and is a Class I railroad engaged in business as a common carrier for hire in the transportation of passengers and property in interstate and foreign commerce subject to the provisions of Part 1 of the Interstate Commerce Act (49 U.S.C. § 1 *et seq.*) and is a "carrier" within the meaning of that term as defined in the Railway Labor Act. The railroad is an integral part of the nationwide railway system of the United States and governed by the provisions of the Interstate Commerce Act and the Railway Labor Act and connects and interchanges freight and passengers with other railroads engaged in interstate commerce. Service of summons and of the Complaint can be made in accordance with the provisions of Rule 4(d)(3) of the Federal Rules of Civil Procedure upon defendant Long Island by serving the summons and Complaint upon either Mr. Francis S. Gabreski, President, or Mr. Thomas Taranto, General Counsel, Long

Island Rail Road Company, Jamaica Station, Jamaica, New York 11435.

5. Defendant MTA is an agency of the State of New York. It is the sole stockholder of the Long Island. Its principal offices are located at 1700 Broadway, New York, New York 10019. Service of summons and of the Complaint can be made by serving the summons and Complaint upon Mr. Robert Abrams, Attorney General of State of New York, Two World Trade Center, New York, New York 10047.

COUNT I

STATEMENT OF PLAINTIFF'S CAUSE OF ACTION UNDER COUNT I

6. Section 2, First of the Railway Labor Act (45 U.S.C. § 152, First) requires railroads and employees subject to the provisions of that statute to use every reasonable effort to make and maintain collective-bargaining agreements and to settle disputes arising out of such agreements. Sections 5 and 6 of the Act (45 U.S.C. §§ 155 and 156) establish mandatory procedures for changing provisions of collective-bargaining agreements in the railroad industry. Section 6 of the Railway Labor Act (45 U.S.C. § 156) requires carriers and representatives of employees to give written notice of an intended change in collective-bargaining agreements affecting rates of pay, rules and working conditions and sets forth a mandatory procedure to be followed in the negotiation of such proposed changes. Section 5 of the Railway Labor Act (45 U.S.C. § 155) authorizes either party to a dispute between employees and a carrier subject to the Act to invoke the services of the National Mediation Board to mediate any dispute concerning changes in rates of pay, rules and working conditions not resolved by parties themselves in conference. That section further provides that if the efforts of the National Mediation Board to bring about a settlement of such a dispute through media-

tion are unsuccessful, the Board shall endeavor as its final required action to induce the parties to submit the controversy to arbitration and that, if arbitration at the request of the Board shall be refused by one or both parties, the Mediation Board shall at once notify both parties in writing that its mediatory efforts have failed and shall terminate mediation. Section 5 finally provides that no change shall be made in the rates of pay, rules and working conditions or established practices in effect between the parties prior to the time that the dispute arose until the expiration of the thirty (30) days after the Board has notified the parties of the failure of mediation. Upon the expiration of such 30-day period, the parties are free to exercise self-help unless the President of the United States appoints an Emergency Board to investigate and report with respect to the dispute in accordance with the provisions of Section 10 of the Railway Labor Act (45 U.S.C. § 160). Under that section, after the creation of an Emergency Board and for 30 days after such Board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose. Thereafter, the parties may resort to self-help if the dispute remains unresolved.

7. On June 29, 1978, Plaintiff UTU served written notice upon the defendant Long Island of intended changes in its agreement with the Long Island affecting rates of pay, rules and working conditions of employees of the Long Island represented by said plaintiff in accordance with the requirements of Section 6 of the Railway Labor Act. Plaintiff served subsequent Section 6 notices on the Long Island on November 1 and 15, 1978, December 15, 1978, and February 16, 1979. Plaintiff has fully complied with the mandatory provisions of Section 6 in an effort to reach agreement through conferences with the representatives of the Long Island with respect to such proposed changes. When such efforts were

unsuccessful, the parties on April 5, 1979, filed a joint application with the National Mediation Board, invoking its services in the mediation of the dispute. The Board thereupon undertook such mediation but failed to resolve the dispute in the course of that stage. On November 7, 1979, the Board advised plaintiff UTU in writing that its mediatory efforts had failed and that it was terminating mediation. The 30-day status quo provided by Section 5 of the Railway Labor Act after such notification expires at midnight on Friday, December 7, 1979. No Emergency Board has been appointed by the President of the United States to investigate and report upon the dispute. Therefore, under the provisions of the Railway Labor Act, the plaintiff UTU and the Long Island employees it represents have a fundamental right under the Railway Labor Act to resort to self-help after midnight on December 7, 1979. This right to self-help at this stage of the dispute is Federally guaranteed against interference by Federal or State Courts. (29 U.S.C. § 101 *et seq.*).

8. Since the notification by the National Mediation Board to plaintiff UTU that it had released this dispute from mediation, plaintiff has voluntarily met under the auspices of that Board in further sessions with representatives of the Long Island in an effort to negotiate a settlement of the dispute between it and the Long Island. The Long Island's persistence in its token responses has resulted in the failure of this final effort by the Board to effect a peaceful resolution of the dispute.

9. The Long Island is a carrier subject to the Railway Labor Act and its labor relations are governed by the Railway Labor Act. As throughout the history of labor relations on this property, plaintiff and the Long Island processed their current dispute under the provisions of the Railway Labor Act. On November 21, 1979, the Interstate Commerce Commission in a proceeding identified as *Brotherhood of Locomotive Engineers*,

et al. v. *Staten Island Rapid Transit Operating Authority* (360 I.C.C. Report 464), in which UTU was one of the petitioners, issued a decision in which it restated at page 475 the long established fact that the Long Island is a carrier subject to the Interstate Commerce Act which in turn makes it a carrier subject to the Railway Labor Act. In that decision, the ICC at page 477 also stated as follows with respect to the Railway Labor Act:

> "The act essentially affords procedural, but by no means insubstantial devices by which to settle labor disputes. Implicit in the statutory scheme is the fundamental right to resort to self-help once the devices are exhausted. See *Brotherhood of Railroad Trainmen et al.* v. *Jacksonville Terminal Co.*, 394 U.S. 369 at 377-380 (1969)."

It is thus an established fact that the Long Island is a carrier subject to the Railway Labor Act, that such Act exclusively governs labor relations of the Long Island, and that UTU and the employees of the Long Island whom it represents have a Federal right to resort to self-help to resolve disputes concerning changes in existing collective-bargaining agreements where, as here, the mandatory statutory provisions of that Act have been exhausted. However, for a number of years, it has been and continues to be the position of the MTA and the Long Island (a) that both the statutory and common law of the States of New York prohibit the resort to self-help by the employees of the Long Island despite the guarantees of the Railway Labor Act protecting self-help following exhaustion of the mandatory bargaining procedures and (b) that MTA and the Long Island may properly restrain in State Court proceedings the employees of the Long Island from exercising their Federally guaranteed rights. This position is set forth by Mr. Harold Tompkins, Assistant Attorney General of the State of New York in an affidavit to this Court, dated December 9, 1977, in

MTA and the Long Island v. *United Transportation Union, et al.* (77 Civil 23580) involving a motion by the MTA and the Long Island to remand the case from this Court to the Supreme Court of the State of New York, County of Queens, from which it had been removed by the UTU pursuant to Federal law. This position of defendants has continued to the present time and has never been withdrawn or changed to the knowledge and belief of the plaintiff. It has been continuously asserted in litigation before this Court concerning the Staten Island Rapid Transit Operating Authority (SIRTOA) identified as *Brotherhood of Locomotive Engineers, et al.* v. *SIRTOA, et al.* (78 C. 2083) and *System Federation No. 1, Railway Employes Dept., et al.* v. *John G. DeRoos, et al.* (78 C. 1931), in which UTU is one of the plaintiffs.

10. Moreover, this position of the defendants MTA and the Long Island that New York common and statutory law prohibit the employees of the Long Island from exercising their Federal right of self-help has been rejected by this Court in a 1979 decision in the SIRTOA cases cited above, in which plaintiff UTU was one of the plaintiffs. This Court rejected the application of New York State Law, which is referred to as the Taylor Law, to railroad employees subject to the Railway Labor Act in a decision of Chief Judge Mishler dated February 9, 1979, in which the Court (page 21) stated "Whether in the public sector or in the private sector, employees subject to the Railway Labor Act have a guaranteed right to engage in peaceable strike activities." This Court deferred the issue of whether SIRTOA is a Railway Labor Act carrier to the Interstate Commerce Commission which subsequently found in the affirmative in a unanimous decision of November 21, 1979, cited above. The Commission held that both SIRTOA and the Long Island were carriers subject to the Railway Labor Act which, as above described, guarantees its employees the right to exercise self-help following exhaustion of the mandatory pro-

cedures. This matter is now before this Court on a motion by UTU and other plaintiff railway labor organizations in that matter to reconsider its judgment in light of the ICC action. Thus, there exists an actual present controversy between the MTA and the Long Island on the one hand and UTU on the other hand as well as other railway labor organizations with respect to the application of New York State law to prevent employees of the Long Island from engaging in self-help guaranteed by the Railway Labor Act appropriate for resolution by a declaratory judgment of this Court. A decision of this Court declaring the rights of employees of the Long Island is necessary to the protection of their Federally established rights.

11. The making and maintenance of collective-bargaining agreements between UTU and the Long Island governing the rates of pay, rules and working conditions of the employees of the Long Island represented by UTU and the making of changes in those collective-bargaining agreements including the fundamental rights of the employees to engage in self-help against the Long Island where the mandatory provisions of the Railway Labor Act have failed to resolve disputes concerning such changes, are exclusively governed by the Railway Labor Act, are protected by the Norris-LaGuardia Act and are not subject to any law or regulation of the State of New York. Resort by the Long Island and/or the MTA to a New York State Court action to interfere with the exercise of the Federal rights of the employees of the Long Island represented by UTU in the present disputes is in violation of the Railway Labor Act and the Norris-LaGuardia Act and State Court action interfering with such rights would be in contravention of the Supremacy Clause of the United States Constitution. The resort by either or both of these two defendants to a State Court to prohibit the employees of the Long Island represented by UTU from exercising Federally protected rights will

substantially injure those rights at least by delaying their exercise over a substantial period of time and will cause irreparable injury to plaintiffs and those employees. Such injury to Federally protected rights is threatened unless this Court grants declaratory relief to prevent the defendants or either of them from resorting to State Court action since defendants will resort to state courts to prevent the exercise of such rights in accordance with their established and continued position set forth above.

PRAYER FOR RELIEF

WHEREFORE, plaintiff UTU prays that this Court enter the following orders and judgments in Count I of this Complaint:

(1) A declaratory judgment that the Long Island is a carrier within the meaning of the Interstate Commerce Act and the Railway Labor Act; and

(2) A declaratory judgment that the employees of the Long Island represented by plaintiff UTU are exclusively governed by the Railway Labor Act with respect to the making and maintenance of collective-bargaining agreements governing rates of pay, rules and working conditions of such employees, including the making of changes in such agreements, and are entitled to the rights provided by that Federal Statute with respect thereto, including the right of self-help upon the exhaustion of the mandatory provisions of the Railway Labor Act governing proposed changes; and

(3) A declaratory judgment that State law, namely the New York Civil Service Law, §§ 200 *et seq.*, is inapplicable to employees of the Long Island and accordingly that said employees of the Long Island represented by UTU are free to exercise self-help after midnight on December 7, 1979, with respect to the pending dispute between UTU and the Long Island concerning proposed changes in collective-bargaining agreements governing

the rates of pay, rules and working conditions of employees represented by UTU; and

(4) Reasonable attorneys' fees; and

(5) The cost of this action; and

(6) Such other and different relief that may be appropriate in these premises.

COUNT II

STATEMENT OF PLAINTIFF'S CAUSE OF ACTION UNDER COUNT II

12. Plaintiff UTU realleges allegations contained in paragraphs 1 through 11 in Count I of this Complaint above and incorporate and adopt those allegations herein as allegations under Count II of this Complaint.

13. An injunction by this Court is needed in order to restrain interference by the Long Island or any officer or agent thereof and/or its parent MTA or any person or entity acting on behalf of the Long Island or MTA with the UTU and/or the employees of the Long Island whom it represents in the exercise of Federally guaranteed rights of self-help in the labor dispute described in Count I above with respect to which all mandatory provisions of the Railway Labor Act have been exhausted and which will be available to them at 12:01 a.m. December 8, 1979.

14. The injunctive relief prayed for in this Complaint is also necessary in the aid of this Court's jurisdiction to consider and grant the clearly required declaratory relief prayed for by this Complaint. In the absence of such relief, the defendants or either of them can resort to State Court action and defeat the very Federal rights which this Court is asked to declare by this Complaint and they will do so in accordance with their well-established legal positions already asserted to this Court. This Court is clearly the proper forum to determine the Federal rights

of the employees of the Long Island involved which it has already declared in the SIRTOA cases cited above. The injunctive relief is also clearly necessary to protect and effectuate a declaratory judgment by this Court with respect to Federal rights of the plaintiff and employees of the Long Island whom it represents.

PRAYER FOR RELIEF

WHEREFORE, plaintiff UTU prays that this Court enter orders and judgments under Count II of this Complaint as follows:

(1) A permanent injunction restraining defendant Long Island, its officials and agents and/or its parent MTA or any person or entity acting upon their behalf from attempting to interfere in any manner with the exercise of such Federal rights, including the filing of a State Court action in the State of New York to enjoin such exercise of Federal rights or pursuing any such State Court action which may have been filed; and

(2) A preliminary injunction granting plaintiffs the relief requested in paragraph (1) above pending a hearing on this Complaint and the granting of the relief prayed for in paragraphs (1) through (3) of the prayer for relief in Count I above; and

(3) A temporary restraining order granting the relief requested in paragraph (1) above for the period permitted by Federal law for such relief; and

(4) Reasonable attorneys' fees; and

(5) Costs of this action; and

(6) Any other and different relief which may be appropriate in the premises.

HIGHSAW, MAHONEY &
FRIEDMAN, P.C.

By /s/ Edward D. Friedman
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Attorneys for
United Transportation Union

Date: December 6, 1979

VERIFICATION OF COMPLAINT

EDWARD YULE, JR., being duly sworn deposes and says that he is the duly elected General Chairman of the United Transportation Union, General Committee of Adjustment, Long Island Railroad, the plaintiff in the above-entitled case; that he is familiar with the labor dispute which is the subject matter of this Complaint; that he has read the Complaint; and that all of the allegations therein are true and correct to the best of his knowledge and belief.

/s/ Edward Yule, Jr.
EDWARD YULE, JR.

Subscribed and sworn to before me
this 5th day of December, 1979.

/s/ Beverly M. Bird
Notary Public

My Commission Expires: 10/19/81

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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79 Civ. 3118 (JM)

UNITED TRANSPORTATION UNION
14600 Detroit Avenue
Cleveland, Ohio 44107
Plaintiff,

—against—

LONG ISLAND RAIL ROAD COMPANY
Jamaica Station
Jamaica, New York 11435,

and

METROPOLITAN TRANSPORTATION AUTHORITY
OF NEW YORK
347 Madison Avenue
New York, New York 10017
Defendants.

ANSWER

Defendants The Long Island Rail Road Company ("LIRR") (sued herein as Long Island Rail Road Company) and Metropolitan Transportation Authority of New York ("MTA") for their answer to the complaint herein:

1. Deny the averments of paragraph 1 thereof except that plaintiff seeks to invoke the jurisdiction of this Court as averred therein.

2. Deny the averments of paragraph 2 thereof except that LIRR and MTA are authorized to and do business in this district and that LIRR is a wholly-owned subsidiary of MTA.

3. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 3 thereof except that plaintiff has been certified by the National Mediation Board as the exclusive collective bargaining representative for certain employees of LIRR, and except that there are collective bargaining agreements between plaintiff and LIRR, and respectfully refer the Court to those agreements for the terms thereof, which agreements have in the past been negotiated and maintained pursuant to the Railway Labor Act which defendants aver no longer applies.

4. Deny the averments of paragraph 4 thereof except that LIRR is a public benefit corporation organized and existing under the laws of the State of New York and interchange freight with railroads engaged in interstate commerce, and avers that the other averments of paragraph 4 thereof are conclusions of law as to which they are not required to plead.

5. Deny the averments of paragraph 5 thereof except that LIRR is a wholly owned subsidiary of MTA.

6. Deny the averments of paragraphs 6, 9, 10 and 11 thereof as conclusions of law as to which they are not required to plead.

7. Deny the averments of paragraph 7 thereof except that plaintiff served written notices on LIRR of intended changes in its agreement with LIRR and respectfully refer the Court to those notices for their terms, and except that plaintiff and LIRR filed an application with the National Mediation Board and respectfully refer the Court to that application for its terms, and except that, on information and belief, the National Mediation Board advised plaintiff concerning its mediation effort, and except that after a strike by plaintiff and its members began on December 8, 1979, a Presidential Emergency Board was appointed, and avers that the other averments of paragraph 7 thereof are conclusions of law as to which they are not required to plead.

8. Deny the averments of paragraph 8 thereof except that plaintiff and LIRR continued to negotiate their dispute after the termination of mediation.

9. Deny the averments of paragraphs 13 and 14 thereof.

FIRST DEFENSE

10. The verified complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

11. LIRR is a public benefit corporation of the State of New York.

12. By reason thereof, the New York Civil Service Law §§ 200-214 applies to LIRR and its employees.

13. Congress, when it enacted the Railway Labor Act in 1926, could not have intended that Act to apply to an intrastate commuter railroad such as LIRR.

14. By reason thereof, the Railway Labor Act does not apply to the LIRR.

15. By reason thereof, the verified complaint herein should be dismissed.

THIRD DEFENSE

16. Defendants repeat the averments of paragraph 11 hereof.

17. Commuter passenger transportation is a vital and traditional concern of the State of New York and its governmental subdivisions.

18. The LIRR is essentially a passenger railroad providing intrastate commuter service into and out of New York City and is heavily subsidized by the State of New York.

19. The operation of LIRR constitutes a vital governmental function of the State of New York, and the State of New York has a vital interest both in continuing this function without interruptions and in the terms of employment of the employees of the LIRR.

20. By reason thereof, the verified complaint herein should be dismissed.

WHEREFORE, defendants demand judgment dismissing the complaint herein, awarding them their costs of this action and awarding them such other and further relief as the Court may find proper.

New York, New York
February 19, 1980

/s/ Thomas Taranto
THOMAS TARANTO
Attorney for Defendant
The Long Island Rail Road
Jamaica Station
Jamaica, New York 11435

SEWARD & KISSEL
By /s/ Anthony R. Mansfield
A Member of the Firm
Attorneys for Defendant
Metropolitan Transportation
Authority
63 Wall Street
New York, New York 10005

[Certificate of Service Omitted in Printing]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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79 Civ 3118
Jacob Mishler

UNITED TRANSPORTATION UNION
(EDWARD YULE, JR., Its General Chairman),
Plaintiff,

—against—

LONG ISLAND RAIL ROAD COMPANY and
METROPOLITAN TRANSPORTATION AUTHORITY,
Defendants.

AFFIDAVIT OF EDWARD YULE, JR.

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

1. EDWARD YULE, JR., being duly sworn, deposes and says:

2. I am the General Chairman of the UNITED TRANSPORTATION UNION ("UTU") the plaintiff herein.

3. This affidavit is submitted in support of the instant motion for the reliefs requested herein.

4. Your affiant has been told by representatives of the LONG ISLAND RAIL ROAD that their legal status has been changed from that of a public benefit subsidiary corporation to that of a public benefit corporation.

5. Your affiant wishes to inform the Court of the following history of the present contract negotiations as they relate to the UTU's seeking self help under the

Railway Labor Act. On December 8, 1979, at 12:01, the UTU struck the LONG ISLAND RAIL ROAD. Said strike continued until December 14, 1979 at which time, under the Railway Labor Act, President Jimmy Carter invoked the sanctions of said Legislation and created an Emergency Presidential Board to investigate the dispute between the LONG ISLAND RAIL ROAD and the UTU as well as other unions that had struck during said period. Under the Legislation scheme for said Emergency Presidential Board, a fact finding was held in Washington, D. C. before a three-man board. Said Board rendered its decision to the President on January 14, 1980. Since the publishing of the Emergency Presidential Board's finding, negotiations have continued and presently are being conducted in New York City, with the voluntary assistance of the National Mediation Board.

6. Pursuant to the Railway Labor Act, the strike that had been in progress during the period December 8 to December 14 was enjoined for a 60-day period. As the General Chairman of the UTU, I have publically announced both to the management negotiations team and to the news media that if a fair and equitable contract cannot be agreed upon prior to February 14, 1980 at 12:01 that I will resume the strike previously enjoined.

7. Your affiant was a union representative in 1977 when the METROPOLITAN TRANSIT AUTHORITY and the LONG ISLAND RAIL ROAD invoked the Taylor Law during a strike of the UTU by going to State Supreme Court, Queens County and obtaining a temporary restraining order enjoining a strike. Additionally, the news media has reported that Mr. Ravitch, Chairman of the Board of the METROPOLITAN TRANSIT AUTHORITY had gone to Governor Carey in order to have him put the LONG ISLAND RAIL ROAD under the Taylor Law. Governor was reported to have instructed Mr. Ravitch to file the Certificate under the Public Authority Law to make the LONG ISLAND RAIL ROAD a public benefit corporation.

8. Furthermore, your affiant has been informed by his counsel that the LONG ISLAND RAIL ROAD and METROPOLITAN TRANSIT AUTHORITY had made a motion to dismiss the subject declaratory judgment in this Court. The reason stated in said papers was that the LONG ISLAND RAIL ROAD did not come under the Taylor Law as it was then legally constructed as a public benefit subsidiary corporation. Once the Certificate was filed to create the LONG ISLAND RAIL ROAD as a public benefit corporation, the LONG ISLAND RAIL ROAD and the METROPOLITAN TRANSIT AUTHORITY withdrew their motion to dismiss the declaratory judgment. The reason given by the LONG ISLAND RAIL ROAD and METROPOLITAN TRANSIT AUTHORITY was because now the UTU was under the Taylor Law, in their opinion.

9. Due to all this activity by the METROPOLITAN TRANSIT AUTHORITY and LONG ISLAND RAIL ROAD the defendant has invoked Taylor Law sanctions against the UTU if it should seek to use self help under the Railway Labor Act, which has controlled the subject negotiations up until this time. The invoking of the Taylor Law by the LONG ISLAND RAIL ROAD and METROPOLITAN AUTHORITY caused irreparable harm to the members of the UTU in that management would be able to further prolong the contract negotiations. The self help provisions of the Railway Labor Act is the only effective means and leverage that Labor has to compel management to earnestly and expeditiously address and resolve Labor's needs and demands. Confirming this fact is that without the threat or the ability of Labor to strike under the Railway Labor Act until they were released by the Mediation Board, management did not propose any meaningful economic package to settle the contract and they did not even discuss work rule changes requested by Labor. In fact, twelve months were consumed from the expiration of the prior contract be-

tween Labor and management until the National Mediation Board, under the Railway Labor Act, released the Unions to seek self help. During that time, no meaningful negotiations were conducted by management. It is your affiant's belief, and it has been his experience, that without the ability to strike and Labor's opting to use said strike authority, management has not earnestly negotiated the present contract.

10. Recently the Interstate Commerce Commission (ICC) had before it a matter involving the Staten Island Rapid Transit Operating Authority (SIRTOA) wherein MTA claimed that SIRTOA was not a carrier subject to the Interstate Commerce Act. SIRTOA was at that time, and still is, a public benefit subsidiary corporation of MTA.

11. The ICC, in a decision rendered on November 8, 1979, decided that SIRTOA was a carrier subject to the Interstate Commerce Act, despite the fact that it was and still is a public benefit corporation.[1] Said decision is attached hereto, made part hereof as if herein set forth and marked Exhibit "A".

12. I do not deal herein with form, as the defendant is attempting to do in this matter, but shall deal with the federal interstate commerce character of the LONG ISLAND RAIL ROAD (LIRR) which is not changed by the defendant's attempts to transform the LIRR from a stock corporation to a public benefit corporation.

13. Since my initial employment with the LIRR, I have been a member of the UTU which represents all train crew employees employed by the LIRR, numbering approximately 1,500 employees.

14. In the course of my employment with LIRR I have observed that the LIRR hauls freight for consignors

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[1] Brotherhood of Locomotive Engineers et al v. Staten Island Rapid Transit Operating Authority Finance Docket No. 29011 decided November 8, 1979.

and to consignees throughout the length and breadth of the United States and Canada. The freight hauled included, among other things, coal, building materials, chemicals, heavy machine equipment, aircraft parts, radioactive materials, paper products, electronic parts, petroleum, farm products, and so forth.

15. Freight cars of the following interstate rail carriers have been hauled by LIRR in transporting the aforementioned freight, both during the period prior to 1966, and continuing up to the present time:

Atchison, Topeka and Santa Fe Railroad
The Southern Railroad Company
Florida, East Coast Railroad Company
Reading Railroad Company
Jersey Central Railroad Company
Main Central Railroad Company
Great Northern Railroad Company
Union Pacific Railroad Company
Penn Central Railroad Company (ConRail)
Norfolk and Western Railroad Company
Canadian and Pacific Railroad Company
Canadian National Railroad Company
Erie Lackawanna Railroad Company
Chicago Northwestern Railroad Company
Burlington Railroad Company

16. Freight cars owned by these and other interstate rail carriers are continuously being used on the LIRR property. At any given time, approximately 1,000 freight cars owned by other interstate rail carriers are in transit on LIRR trackage. In addition to other carrier's freight cars, the LIRR itself owns and operates approximately 80 diesel locomotives, over 900 electric passenger cars and approximately 200 diesel hauled passenger cars.

17. The freight customers located on Long Island, serviced by the LIRR, include aircraft manufacturers, farms, supermarket chains, mine operators, food processors, hospitals, public utilities, building suppliers, etc. The

LIRR serves these freight customers at four major freight terminals, over approximately 350 miles of trackage, and approximately 250 freight sidings located throughout the 4 counties of Long Island.

18. The LIRR provides engine services for freight trains delivered to it by other interstate carriers at interchange points located at the Fremont Yard area in Queens County, which is owned and operated by Consolidated Rail Corporation (Conrail); and at Sunnyside Yard, also located in Queens County, which is owned and operated by Amtrack and Penn Central Railroads. Additionally, the LIRR makes daily use of tunnels and station facilities and services of Pennsylvania Station in New York City, which are owned and operated by Amtrak.

19. The LIRR is the only rail common carrier and the only provider of rail freight services located in Nassau and Suffolk Counties and is the principal rail freight carrier servicing Queens and Kings Counties. As a consequence of this unique position in these four counties, the LIRR provides the only link into the interstate freight rail system for major freight customers on Long Island. For the calendar year 1978, the revenue produced for the LIRR from its freight service totalled over $32,023,000 out of $255,453,000.

20. In executing its responsibilities as a common carrier by railroad, it is required to comply with a variety of federal statutes, enforced by the Interstate Commerce Commission, such as:

Federal Locomotive Inspection Act
Hours of Service Act
Boiler Inspection Act
Safety Appliance Act
Hazardous Material Act
Accident Reports Act
Power Brake Law
Federal Employees Liability Act, etc.

21. Pursuant to various federal rules and regulations, the LIRR is required to undertake a variety of tests and inspections on its equipment, including, but not limited to, monthly inspections of diesel locomotives used in freight and passenger service; 48 hour inspections of diesel locomotives in yard service, air pressure tests on braking systems, operational brake tests, boiler tests, etc. All these tests are made by employees of the LIRR. In addition, federal inspectors employed by the United States Department of Transportation conduct tests of the LIRR tracks, cars, signals, etc. on the LIRR property and are empowered to order such equipment out of service.

21. The LIRR employs approximately 2,000 operating employees as trainmen, conductors, brakemen and engineers. Approximately 200 of these employees are employed in freight service. An additional 4,500 employees are employed in non-operating classifications, such as maintenance employees, block operators, security personnel, clerks, etc.

22. I am informed that LIRR has consistently taken the position in litigation that it "is a common carrier by railroad engaged in interstate commerce and, as such, is subject to the provisions of the Interstate Commerce Act, the Railway Labor Act, the Federal Employers Liability Act, and all other federal legislation regulating or affecting common carriers by railroad engaged in interstate commerce".[2]

23. This Court should take judicial notice that Federal grants, well in excess of a half billion dollars, have been received by LIRR for purposes of operating both its passenger and freight services in interstate commerce in the past four years.

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[2] See page 3 of LIRR memo in opposition to petition to Remand in Mills v. Long Island Rail Road Co., U.S. District Court for the Eastern District of New York, Civil Action No. 74 C 842.

24. Both prior to and after the MTA acquired LIRR, bargaining disputes and grievance matters have been handled under the provisions of the Railway Labor Act. Thus, in order to change or amend existing contracts, the parties have served so-called Section 6 Notices, which are denoted as such since required by Section 6 of the Railway Labor Act. Existing collective bargaining agreements between the parties refer to and incorporate the requirements and procedures of the Railway Labor Act. For example Article 56 of the March 31, 1978 agreement between UTU and LIRR provides:

> "This Agreement supersedes all previous Agreements, understandings, and practices however established, with which it is in conflict and shall continue in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended."

25. Under the Railway Labor Act, railroad employees are classified and uniqnized according to crafts and classes. The craft distinctions and designations are made by the National Mediation Board (NMB). UTU was certified as bargaining agent by the NMB for the LIRR train crew employed by LIRR.

26. UTU and all the other unions on the property of the LIRR and the LIRR have always carried on all aspects of labor management relations exclusively within the framework of the Railway Labor Act.

27. Beginning in mid-1978, and continuing in 1979, the above-named unions, pursuant to Section 6 of the Railway Labor Act, individually served on the railroad, notices of demands to amend numerous provisions of their Collective Bargaining Agreements with the plaintiff.

28. On June 29, 1978, November 1 and 15, 1978, December 15, 1978, and February 16, 1979, plaintiff served Section 6 Notices requesting a number of changes in the current Collective Bargaining Agreements.

29. On April 5, 1979, the plaintiff invoked mediation service of the National Mediation Board in relation to the Section 6 Notices served by it.

30. NMB determined that the parties were in fact dead-locked and pursuant to the Federal Railway Labor Act proffered arbitration. The parties did not agree to go to arbitration. As a result, again pursuant to the Federal Railway Labor Act, the NMB released the parties from mediation on November 7, 1979 and the statutory 30-day "Status Quo" began to run.

31. On December 8, 1979, UTU lawfully restored to self-help and struck the LIRR.

32. On December 14, 1979, President Carter, by Executive Order No. 12170, pursuant to Section 10 of the Railway Labor Act, created an Emergency Board because the President had been informed by the NMB that in the judgment of the NMB the existence of a strike on the LIRR threatened substantially to interrupt interstate commerce. As a result of the creation of this Board, the strike called by the UTU was called off in compliance with the Federal Railway Labor Act.

33. On January 14, 1980, the Emergency Board, following its investigation of the issues in dispute and after having held formal hearings on the record and informal meetings with the parties, submitted its report to the President.

34. This Board, in its decision, stated, among other things, "the Long Island Rail Road Company is a Class 1 railroad subject to the jurisdiction of the Interstate Commerce Commission and the provisions and procedures of the Railway Labor Act."

35. All of the above steps were taken by all parties pursuant to the requirements and provisions of the Federal Railway Labor Act.

36. I have been informed that a similar situation as is now before this Court, was before Judge JACK B. WEINSTEIN in the United States District Court for the Eastern District of New York in the matter of *MTA* v. *UTU* (77 C 2358). In that case my union had threatened to strike and the MTA and LIRR attempted to enjoin that strike on the ground that the LIRR employees were subject to the Taylor Act. Harold Tompkins, the Assistant Attorney General, who appears in this case, appeared in that case on behalf of the Attorney General of the State of New York, as attorney for the plaintiff in that action. That case was removed from the State Court to the Federal Court by the UTU.

37. The Attorney General in that case moved, as it now does in this case, to remand to the State Court. Judge Weinstein denied the petition to remand stating, among other things, that the Court had no alternative but to accept jurisdiction.

38. The Court stated "It has no power to remand".

39. The Court further stated, in support of its decision: "It does seem to me that although the complaint is artfully framed to avoid a federal question, that on the basis of judicial notice the court cannot avoid the conclusions that the complaint implicitly involves a serious federal question". Attached hereto and made part hereof as if herein set forth in full and marked Exhibit "B" is a pertinent excerpt from the Minutes before Judge Jack B. Weinstein.

40. Annexed hereto and marked Exhibit "C" are excerpts covering LIRR derived from Moody's Transportation Manual and from the R-1 Annual Reports filed by LIRR with the Interstate Commerce Commission for the year 1978. Also attached as part of this exhibit is a photostatic copy of Opinion Letter of September 17, 1979 issued by the Wage-Hour Administration of the U.S.

Department of Labor published as para. 31,289 at p. 392 of the Commerce Clearing House Wage-Hour Service.

41. The eminence of the State Court action in seeking an injunction versus my union and myself requires expeditious consideration by this Court through the use of an order to show cause with a stay and not by the regular procedure of a normal motion.

42. A prior application sought by plaintiff for a temporary restraining order in this Court was denied by Judge Mishler without prejudice to renewal.

43. No previous application has been made for the relief sought herein to any Court or Judge except as hereinabove set forth.

WHEREFORE, your deponent respectfully requests that the instant motion be granted.

/s/ Edward Yule, Jr.
EDWARD YULE, JR.

Sworn to before me this
27th day of February, 1980

/s/ IAN JAY GURA
Notary Public
State of New York
No. 31-1605912
Qualified in New York County
Commission Expires March 30, 1981

1978 ANNUAL REPORT TO THE INTERSTATE COMMERCE COMMISSION BY THE LONG LSLAND RAILROAD COMPANY, EXCERPT OF OPERATING INCOME

210. RESULTS OF OPERATIONS

1. Disclose the requested information for the respondent pertaining in the results of operations for the year.

2. Report total operating expenses from Schedule 410 of this report. Any disparities in expense amounts shown in this schedule and expense amounts reported in Schedule 410 must be fully explained.

3. List dividends from investments accounted for under the cost method on the appropriate line for Account No. 513. "Dividend income." List dividends accounted for by the equity method on the appropriate dividend line under "Income from Affiliated Companies" subsection of this schedule.

4. All contra entries hereunder should be indicated in parenthesis.

5. Report dollars in thousands.

Line No.		Item	Amount for Current Year	Amount for Preceding Year	Freight-Related Revenues & Expenses	Passenger-Related Revenues & Expenses
		(a)	(b)	(c)	(d)	(e)
		ORDINARY ITEMS OPERATING INCOME				
		Railway Operating Income				
1	(101)	Freight **	$ 17,543	N	$17,543	$
2	(102)	Passenger **	118,891			118,891
3	(103)	Passenger-Related	1,884	O		1,884
4	(104)	Switching	2		2	
5	(105)	Water Transfers				
6	(106)	Demurrage	790	T	790	
7	(110)	Incidental	1,439		24	1,415
8	(121)	Joint Facility-Credit				
9	(122)	Joint Facility-Debit				
10	(501)	Railway operating revenues (Exclusive of transfers from Government Authorities)	140,549		18,359	122,190
11	(502)	Railway operating revenues-Transfers from Government Authorities for current operations	114,904		13,664	101,240
12	(503)	Railway operating revenues-Amortization of deferred transfers from Government Authorities		A		
13		Total railway operating revenues (lines 10-12)	255,453		32,023	223,430
14	(531)	Railway operating expenses	304,929	V	32,553	272,376
15		* Net revenues from railway operations	(49,476)		(530)	(48,946)
		OTHER INCOME		A		
		* * * *				

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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79 Civ 3118
Jacob Mishler

UNITED TRANSPORTATION UNION
(EDWARD YULE, JR., its General Chairman),
Plaintiff,

—against—

LONG ISLAND RAILROAD COMPANY and
METROPOLITAN TRANSPORTATION AUTHORITY,
Defendants.

AFFIDAVIT OF THOMAS P. MOORE

STATE OF NEW YORK)
) ss.:
COUNTY OF QUEENS)

THOMAS P. MOORE, being duly sworn, deposes and says:

1. I am the Senior Executive—Administration of defendant, The Long Island Rail Road Company (LIRR). I have been employed by LIRR for over 27 years and am fully familiar with its finances and financial records, all of which are maintained under my overall supervision.

2. LIRR is essentially a commuter railroad, all of whose trackage and trackage rights lie within the counties of New York, Kings, Queens, Nassau and Suffolk, and whose main purpose is the transportation of commuters between their homes on Long Island and their jobs in New York City. On an average weekday, LIRR

carries over 260,000 passengers, the bulk of which consists of about 90,000 commuters making two trips each. While LIRR still handles a small amount of freight, the freight end of the operation has diminished in relation to the passenger operation over the years to the point where it is now virtually insignificant when compared to the passenger operation. For example, 1979 estimates indicate that freight revenues amounted to $13,000,000 while passenger revenues amounted to $137,000,000. Thus, freight revenues accounted for only 8.7% of total revenue (not including subsidies). This is in stark contrast to the average percentage of freight revenue to aggregate revenue of all Class I Railroads of 96.9% (for the first 9 months of 1979). Indeed, over the last 13 years, the industry average percent of freight revenue to aggregate climbed slightly from 95% in 1967 to 96.9% in 1979, whereas the LIRR percentage has dropped from 11.9% in 1967 to 8.7% in 1979. Attached hereto as Exhibit A is a comparison of the ratio of freight revenues to aggregate passenger and freight revenues between the LIRR and Class I Railroads in the United States.

3. While the LIRR's percent of revenue attributable to freight never approached the industry average, it was substantially higher in the past, amounting to 31.7% in 1926, 26.2% in 1936, 31.7% in 1947, and 22.6% in 1956. This corresponds to a greatly reduced number of freight cars handled over the years. In 1926, LIRR handled 290,315 cars, whereas in 1979 LIRR handled an estimated 40,936 cars, about 4,100 of which involved shipments originating and terminating wholly within the State of New York. In 1926, the ratio of revenue freight car miles to passenger car miles was 15.7%, whereas in 1979 it was a miniscule 2.1%. The continual drop off of freight business is shown in more detail in Exhibit B attached hereto entitled "Selected Years Freight Statis-

tics 1926 to 1979," Exhibit B-1 attached hereto entitled "The Long Island Rail Road Company Selected Years Summary of Income 1926-1979 from Form R-1 Annual Report," and Exhibit B-2 entitled "The Long Island Rail Road Company Summary of Income for Years 1960 through 1979 Form R-1 Schedule 300."

4. LIRR runs at a substantial deficit and is heavily dependent upon state subsidies for its continued operation. (See accompanying affidavit of James B. Huff.) Indeed, in 1979 its payroll alone amounted to 100% of its gross revenues. Set forth below is a schedule of LIRR's total deficit and total operating subsidies, from all sources, received through its parent, Metropolitan Transportation Authority (MTA) for the years 1975 through 1979:

Year	Total Deficit Before Subsidy	Total Operating Subsidy
1975	$128,560,000	$113,796,000
1976	120,414,000	90,335,000
1977	121,566,000	94,789,000
1978	164,779,000	114,904,000
1979	189,300,000	150,670,000

Since MTA acquired all the stock of LIRR from the Pennsylvania Railroad Company in 1966 for $65,000,000, the total operating and capital subsidies from all sources received by LIRR through MTA has now exceeded $1 billion.

5. One of the purposes of MTA is to implement a unified mass transportation policy for the area embracing the City of New York and the counties of Duchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester. To this end, steps have been taken to integrate the LIRR passenger service with that provided by various intra-state mass transit systems. For example, the LIRR sells "Uni-Tickets" which are combination tickets which entitle the rider to use the LIRR and various bus

services which interconnect with LIRR stations on a single ticket. Such arrangements are now in effect with the Metropolitan Suburban Bus Authority, an MTA subsidiary providing local bus service in Nassau and Suffolk Counties, the Huntington Area Rapid Transit (HART), a Town operated bus service within the Town of Huntington, Suffolk County and with the New York City Transit Authority (NYCTA) with respect to certain bus service in Queens County. In addition, LIRR sells tokens for use on the facilities of NYCTA, subway connections being readily available at the major New York City terminals of LIRR.

/s/ Thomas P. Moore
THOMAS P. MOORE

Sworn to before me this
29th day of February, 1980

/s/ Roger J. Schiera
ROGER J. SCHIERA
Notary Public
State of New York
No. 41-4614730
Qualified in Queens County
Commission Expires March 30, 1981

[SEAL]

EXHIBIT "A"

THE LONG ISLAND RAIL ROAD COMPANY RATIO OF FREIGHT REVENUES TO AGGREGATE PASSENGER AND FREIGHT REVENUES L.I.R.R. COMPARED WITH CLASS I RRs IN U.S.

PERCENT FREIGHT REVENUE TO AGGREGATE PASSENGER AND FREIGHT REVENUE

Year	L.I.R.R.	Class I RRs
1967	11.9	95.0
1968	11.5	95.6
1969	11.3	95.9
1970	10.9	96.3
1971	10.9	96.5
1972	9.7	96.9
1973	10.2	96.8
1974	10.2	96.5
1975	8.6	96.4
1976	9.1	96.5
1977	8.7	96.7
1978	8.4	97.0
1979 (Estimated)	8.7	96.9

NOTE: Computed as to Class I RRs from information furnished by the Association of American Railroads. 1979 percent of 96.9 represents the actual for nine (9) months.

EXHIBIT "B"

THE LONG ISLAND RAIL ROAD COMPANY

SELECTED YEARS FREIGHT STATISTICS

1926 to 1979

Year	No. of Frt. Cars Handled	No. of Frt. Tons Handled	No. of Revenue Frt. Car Miles	Frt. Rev. Per Car	Frt. Rev. Per Ton	Mo. of Tons Per Car	No. of Passengers Carried	No. of Passenger Miles	Passenger Car Miles
1926	290,315	9,038,716	7,438,107	$ 40.17	$1.29	31	104,794,222	1,637,595,920	47,517,439
1936	174,992	5,235,131	3,896,159	37.60	1.26	30	82,278,859	1,393,130,428	43,655,524
1947	261,043	8,086,312	5,127,129	56.05	1.81	31	112,802,144	2,130,093,471	54,337,774
1956	176,970	5,280,645	3,137,452	79.91	2.68	30	75,276,990	1,622,296,617	48,258,261
1966	113,965	4,163,380	2,162,112	82.72	2.26	37	73,654,536	1,776,623,806	46,633,226
1976	53,417	2,420,816	1,110,000	208.39(1)	4.60	45	67,363,724	1,872,908,162	56,926,000
1979(Est)	40,936	2,072,142	1,148,000	300.15(2)	5.93	51	77,377,623	2,161,330,606	54,574,000

(1) Based on Freight Revenue less Freight Surcharge applicable to Passenger Service $6,887M.

(2) Based on Freight Revenue less Freight Surcharge applicable to Passenger Service $7,087M.

THE LONG ISLAND RAIL ROAD COMPANY
SELECTED YEARS SUMMARY OF INCOME 1926 TO 1979
FROM FORM R-1 ANNUAL REPORT
(DOLLARS IN THOUSANDS)

		Percent of Revenue	Railway Operating Revenue	Railway Operating Expense	Railway Tax Accruals	Net Rents	Total Railway Operating Expense	Railway Operating Deficit	Total Other Income	Total Misc. Deductions	Total Fixed Charges	Total Non-Operating Income (Expense)	Transferred to Retained Income
5	Freight	31.7	$ 12,570	$ 9,706	$ 720	$	$	$	$	$	$	$	$
	Passenger	68.3	27,071	19,310	1,433								
	Total	100.0	$ 39,649	$ 29,016	$ 2,152	$2,649	$ 33,817	$ 5,832	$ 791	$ 259	$3,220	$(2,688)	$ 3,144
6	Freight	26.2	$ 6,693	$ 4,194	$ 703	$ (332)	$ 4,765	$ 1,928	$	$	$	$	$
	Passenger	73.8	18,832	15,[illegible]	2,436	2,305	19,963	(1,131)					
	Total	100.0	$ 25,525	$ 19,616	$ 3,139	$1,973	$ 24,728	$ 797	$ 373	$ 242	$2,086	$(1,955)	$ (1,158
7	Freight	31.7	$ 15,156	$ 11,914	$ 1,641	$1,968	$ 15,523	$ (367)	$	$	$	$	$
	Passenger	68.3	32,627	26,695	3,953	1,802	34,450	(1,823)					
	Total	100.0	$ 47,783	$ 40,609	$ 5,594	$3,770	$ 49,973	$ (2,190)	$ 414	$ 117	$2,103	$(1,806)	$ (3,996
8	Freight	22.6	$ 14,572	$ 10,823	$ 793	$1,997	$ 13,613	$ 959	$	$	$	$	$
	Passenger	77.4	49,950	44,706	3,277	1,028	49,011	939					
	Total	100.0	$ 64,522	$ 55,529	$ 4,070	$3,025	$ 62,624	$ 1,898	$ 487	$ 136	$1,433	$(1,082)	$ [illegible]
9	Freight	11.8	$ 9,379	$ 11,430	$ 693	$2,125	$ 14,248	$ (4,869)	$	$	$	$	$
	Passenger	88.2	69,991	64,503	3,915	1,036	69,454	537					
	Total	100.0	$ 79,370	$ 75,933	$ 4,608	$3,161	$ 83,702	$ (4,332)	$ 645	$ 121	$ 343	$ 181	$ (4,35
76	Freight	5.4	$ 11,975	$ 23,859	$ 1,757	$2,846	$ 28,462	$(16,487)	$	$	$	$	$
	Passenger	53.9	119,395	202,285	14,895	4,799	221,979	(102,584)					
	Subsidy	40.7	90,335	-	-	-	-	90,335					
	Total	100.0	$221,705	$226,144	$16,652	$7,645	$250,441	$(28,736)	$2,243	$ 520	$3,066	$(1,343)	$ (30,079
79	Freight	4.3	$ 13,000	$ 33,300	$ 2,300	$2,300	$ 37,900	$(24,900)	$	$	$	$	$
	Passenger	45.6	137,000	277,700	18,700	4,700	301,100	(164,100)					
	Subsidy	50.1	150,670	-	-	-	-	150,670					
	Total (est.)	100.0	$300,670	$311,000	$21,000	$7,000	$339,000	$(38,330)	$1,500	$ (900)	$2,700	$ (300)	$ (38,53

The accompanying notes are an integral part of this statement.

EXHIBIT "B-1"

Best Copy Available

THE LONG ISLAND RAIL ROAD COMPANY
SELECTED YEARS SUMMARY OF INCOME 1926 TO 1979
(DOLLARS IN THOUSANDS)

NOTES:

1. The figures provided for 1979 have been estimated.

2. In compliance with a Statement of Position on Inter-Governmental Transfers of Funds issued by the American Institute of Certified Public Accountants and an order of The Interstate Commerce Commission, commencing with the year ended December 31, 1978, the Company records operating subsidies received from the MTA as credits to operations. The Company's prior practice was to credit such funds to capital contributions. Therefore, the 1976 Income Statement has been reclassified to record operating subsidies received from the MTA as credits to operations.

Railway Operating Revenues include Freight Surcharge as follows:

Year	Freight	Passenger	Total
1976	$806	$6,837	$7,643
1979	849	7,087	7,936

EXHIBIT "B-1" (cont'd)

THE LONG ISLAND RAIL ROAD COMPANY
SUMMARY OF INCOME FOR YEARS 1960 THROUGH 1979
FORM R-1 SCHEDULE 300
(DOLLARS IN THOUSANDS)

	Percent of Revenue	Railway Operating Revenue	Railway Operating Expense	Railway Tax Accruals	Net Rents	Total Railway Operating Expenses	Railway Operating Deficit	Total Other Income	Total Misc. Deductions	Total Fixed Charges	Total Non-Operating Income (Expense)	Transferred to Retained Income
Freight	17.0	$10,879	$ 9,588	$ 786	$1,532	$11,906	$(1,027)	$	$	$	$	$
Passenger	83.0	53,126	48,946	4,016	858	53,820	(694)					
Total	100.0	$64,005	$58,534	$4,802	$2,390	$65,726	$(1,721)	$1,800	$260	$ 949	$ 581	$
Freight	14.7	$10,288	$10,787	$ 766	$1,406	$12,959	$(2,671)	$	$	$	$	$
Passenger	85.3	59,637	51,779	3,678	514	55,971	3,666					
Total	100.0	$69,925	$62,566	$4,444	$1,920	$68,930	$ 995	$ 571	$157	$ 822	$1,305	$
Freight	15.3	$11,173	$11,216	$ 673	$1,633	$13,522	$(2,349)	$	$	$	$	$
Passenger	84.7	61,762	52,877	3,172	795	56,844	4,918					
Total	100.0	$72,935	$64,093	$3,845	$2,428	$70,366	$ 2,569	$ 503	$104	$ 694	$	$
Freight	14.1	$10,583	$10,892	$ 634	$1,468	$12,994	$(2,411)	$	$	$	$	$
Passenger	85.9	64,384	56,600	3,292	1,366	61,258	3,126					
Total	100.0	$74,967	$67,492	$3,926	$2,834	$74,252	$ 715	$ 564	$ 59	$ 534	$	$
Freight	12.5	$ 9,791	$10,700	$ 625	$1,553	$12,878	$(3,087)	$	$	$	$	$
Passenger	87.5	68,701	62,139	3,628	1,801	67,568	1,133					
Total	100.0	$78,492	$72,839	$4,253	$3,354	$80,446	$(1,954)	$ 309	$ 60	$ 441	$	$
Freight	12.8	$10,125	$11,286	$ 685	$1,668	$13,639	$(3,514)	$	$	$	$	$
Passenger	87.2	68,997	61,942	3,759	2,203	67,904	1,093					
Total	100.0	$79,122	$73,228	$4,444	$3,871	$81,543	$(2,421)	$ 379	$ 84	$ 354	$	$

EXHIBIT "B-2"

THE LONG ISLAND RAIL ROAD COMPANY
SUMMARY OF INCOME FOR YEARS 1960 THROUGH 1979
FORM R-1 SCHEDULE 300
(DOLLARS IN THOUSANDS)

		Percent of Revenue	Railway Operating Revenue	Railway Operating Expense	Railway Tax Accruals	Net Rents	Total Railway Operating Expense	Railway Operating Deficit	Total Other Income	Total Misc. Deductions	Total Fixed Charges	Total Non-Operating Income-(Expense)	Transfer to Retained Income
966	Freight	11.8	$ 9,379	$ 11,430	$ 693	$2,125	$ 14,248	$(4,869)	$	$	$	$	$
	Passenger	88.2	69,991	64,503	3,915	1,036	69,454	537					
	Total	100.0	$79,370	$ 75,933	$4,608	$3,161	$ 83,702	$(4,332)	$ 645	$121	$ 343	$ 181	$(4,151)
967	Freight	11.9	$ 9,595	$ 12,464	$ 777	$2,382	$ 15,623	$(6,028)	$	$	$	$	$
	Passenger	88.1	71,171	70,335	4,389	1,299	76,023	(4,852)					
	Total	100.0	$80,766	$ 82,799	$5,166	$3,681	$ 91,646	$(10,880)	$ 796	$ 46	$ 291	$ 459	$(10,422)
968	Freight	11.5	$ 9,915	$ 13,232	$ 848	$2,797	$ 16,877	$(6,962)	$	$	$	$	$
	Passenger	88.5	76,174	76,090	4,803	1,416	82,309	(6,135)					
	Total	100.0	$86,089	$ 89,322	$5,651	$4,213	$ 99,186	$(13,097)	$ 986	$186	$ 273	$ 527	$(12,570)
969	Freight	11.3	$ 9,911	$ 14,429	$ 928	$2,991	$ 18,348	$(8,437)	$	$	$	$	$
	Passenger	88.7	77,946	87,444	5,427	1,327	94,198	(16,252)					
	Total	100.0	$87,857	$101,873	$6,355	$4,318	$112,546	$(24,689)	$ 703	$ 86	$ 127	$ 490	$(23,199)
970	Freight	10.9	$10,407	$ 16,514	$ 997	$2,464	$ 19,975	$(9,568)	$	$	$	$	$
	Passenger	89.1	85,188	102,501	6,021	1,854	110,376	(25,188)					
	Total	100.0	$95,595	$119,015	$7,018	$4,318	$130,351	$(34,756)	$1,639	$761	$3,937	$(3,059)	$(37,815)
971	Freight	10.9	$10,427	$ 18,829	$ 973	$2,327	$ 22,129	$(11,702)	$	$	$	$	$
	Passenger	89.1	85,641	117,035	5,980	3,498	126,513	(40,872)					
	Total	100.0	$96,068	$135,864	$6,953	$5,825	$148,642	$(52,574)	$1,406	$110	$3,460	$(2,164)	$(54,738)

THE LONG ISLAND RAIL ROAD COMPANY
SUMMARY OF INCOME FOR YEARS 1960 THROUGH 1979
FORM R-1 SCHEDULE 210
(DOLLARS IN THOUSANDS)

		Percent of Revenue	Railway Operating Revenue	Railway Operating Expense	Railway Tax Accruals	Net Rents	Total Railway Operating Expense	Railway Operating Deficit	Total Other Income	Total Misc. Deductions	Total Fixed Charges	Total Non-Operating Income (Expense)	Transfers to Retained Income
1979	Freight	8.7	$ 13,000	$ 33,300	$ 2,300	$2,300	$ 37,900	$(24,900)	$	$	$	$	$
	Passenger	91.3	137,000	277,700	18,700	4,700	301,100	(164,100)					
	Total	100.0	*$150,000	$311,000	$21,000	$7,000	$339,000	$(189,000)	$1,500	$(900)	$[illegible]	$(300)	$(189,[illegible])

Notes:

1. The figures provided for 1979 have been estimated.

2. In compliance with a Statement of Position on Inter-Governmental Transfers of Funds issued by the American Institute of Certified Public Accountants and an Order of the Interstate Commerce Commission, commencing with the year ended December 31, 1978, the Company records operating subsidies received from the MTA as credits to operations. The Company's prior practice was to credit such funds to capital contributions. Therefore, the 1978 and 1979 Income Statements have been reclassified with respect to such items to conform to the prior year's treatment.

   The amount of operating subsidies received from the MTA in 1978 was $114,904,000; and the estimated amount for 1979 is $150,496,000.

   Railway Operating Revenues include Freight Surcharge as follows:

Year	Freight	Passenger	Total
1974	$361	$2,739	$3,100
1975	680	5,444	6,124
1976	806	6,837	7,643
1977	767	6,757	7,524
1978	788	6,574	7,362
1979	849	7,087	7,936

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THE LONG ISLAND RAIL ROAD COMPANY
SUMMARY OF INCOME FOR YEARS 1960 THROUGH 1979
FORM R-1 SCHEDULE 300/210
(DOLLARS IN THOUSANDS)

		Percent of Revenue	Railway Operating Revenue	Railway Operating Expense	Railway Tax Accruals	Net Rents	Total Railway Operating Expense	Railway Operating Deficit	Total Other Income	Total Misc. Deductions	Total Fixed Charges	Total Non-Operating Income-(Expense)	Transfers to Retained Income
'72	Freight	9.7	$ 9,190	$ 17,639	$ 894	$2,119	$ 20,652	$(11,462)	$	$	$	$	$
	Passenger	90.3	85,122	129,055	5,960	4,612	139,617	(54,525)					
	Total	100.0	$ 94,312	$146,694	$6,854	$6,731	$160,269	$(65,987)	$6,015	$ 24	$3,380	$ 2,591	$(63,185)
'73	Freight	10.2	$ 9,462	$ 18,097	$1,135	$2,808	$ 22,040	$(12,578)	$	$	$	$	$
	Passenger	89.8	83,206	136,759	8,331	4,453	149,543	(66,337)					
	Total	100.0	$ 92,668	$154,856	$9,466	$7,261	$171,583	$(78,915)	$4,862	$ 37	$3,297	$ 1,528	$(77,317)
'74	Freight	10.2	$ 11,233	$ 22,907	$ 1,654	$3,318	$ 27,779	$(16,546)	$	$	$	$	$
	Passenge	89.3	98,702	173,294	12,566	4,513	190,373	(91,671)					
	Total	100.0	*$109,935	$196,101	$14,220	$7,831	$218,152	$(108,217)	$1,752	$ 50	$3,212	$(1,510)	$(109,727)
'75	Freight	8.6	$ 10,080	$ 24,493	$ 1,729	$3,505	$ 29,727	$(19,647)	$	$	$	$	$
	Passenger	91.4	107,347	196,174	13,847	4,521	214,542	(107,195)					
	Total	100.0	*$117,427	$220,667	$15,576	$8,026	$244,269	$(126,842)	$1,525	$121	$3,122	$(1,718)	$(126,960)
'76	Freight	9.1	$ 11,975	$ 23,659	$ 1,757	$2,846	$ 28,462	$(16,487)	$	$	$	$	$
	Passenger	90.9	119,395	202,285	14,895	4,799	221,979	(102,584)					
	Total	100.0	*$131,370	$225,944	$16,652	$7,645	$250,441	$(119,071)	$2,243	$520	$3,066	$(1,343)	$(120,414)
'77	Freight	8.7	$ 11,740	$ 23,656	$ 1,818	$2,310	$ 27,784	$(16,044)	$	$	$	$	$
	Passenger	91.3	123,321	208,016	15,983	4,487	228,496	(105,165)					
	Total	100.0	*$135,061	$231,672	$17,801	$6,797	$256,270	$(121,209)	$2,696	$122	$2,931	$ (357)	$(121,566)
'78	Freight	8.4	$ 11,785	$ 28,072	$ 2,057	$2,424	$ 32,553	$(20,768)	$	$	$	$	$
	Passenger	91.6	128,764	250,270	17,168	4,743	272,181	(143,417)					
	Total	100.0	*$140,549	$278,342	$19,225	$7,167	$304,734	$(164,185)	$2,541	$306	$2,829	$ 594	$(164,779)

*'73 data taken from Form R-1, Schedule 210.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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79 Civ. 3118 (JM)

UNITED TRANSPORTATION UNION
14600 Detroit Avenue
Cleveland, Ohio 44107

Plaintiff,

—against—

LONG ISLAND RAIL ROAD COMPANY
Jamaica Station
Jamaica, New York 11435,

and

METROPOLITAN TRANSPORTATION AUTHORITY
OF NEW YORK
347 Madison Avenue
New York, New York 10017

Defendants.

AFFIDAVIT OF JAMES B. HUFF

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JAMES B. HUFF, being duly sworn, deposes and says:

1. I am the Comptroller of defendant Metropolitan Transportation Authority ("MTA") and make this affidavit in support of defendants' motion to dismiss the complaint or, in the alternative, to stay these proceed-

ings, and in opposition to plaintiff's motion for summary judgment and for a stay.

2. In addition to my responsibilities as Comptroller of MTA, I exercise general financial review of the operations of all the affiliated agencies of MTA, including defendant The Long Island Rail Road Company ("LIRR").

3. MTA has day-to-day operating responsibility for major commuter transportation systems in the New York metropolitan region, including rail transportation between Long Island and New York City, New York City's vast subway and bus systems, New York City's commuter rail operation on Staten Island, Nassau County's bus operations, and the great intrastate bridges and tunnels.

4. The purpose behind this coordination of operations dates back to 1968, and was the desire of the State Legislature to weld the several separate private and public agencies furnishing transit service in the metropolitan area into a single agency, in order to eliminate duplication and waste and to achieve a greater coordination of effort. *See* New York Laws 1967, c. 717, § 60. Through these several interlocking affiliates, MTA today moves almost six million bus and rail passengers each business day.

5. In addition to these commuter systems, MTA controls the operations of Conrail's Harlem and Hudson commuter lines and, in cooperation with the state of Connecticut, controls the operations of Conrail's New Haven line. And New York and New Jersey operate the commuter service PATH (Port Authority Trans-Hudson).

6. The LIRR is essentially a commuter passenger railroad. It is a public benefit corporation and a wholly-owned subsidiary of the MTA. The LIRR board consists of fourteen gubernatorial appointees who are the same

individuals who hold office as MTA board members. N.Y. Pub. Auth. Law §§ 1263(1), 1266(5). Moreover, the Chairman and Chief Executive Officer of the MTA serves as Chairman and Chief Executive Officer of the LIRR, and the MTA's chief operating officer, its Executive Director, serves as LIRR's chief operating officer. N.Y. Pub. Auth. Law § 1263(4).

7. The LIRR operates a commuter rail system serving approximately 260,000 passengers each day in Nassau, Suffolk, Queens, Kings, and New York Counties, and is the principal carrier used by residents of Nassau and Suffolk counties for daily commuting in and out of New York City. It does not operate anywhere outside those five counties.

8. The LIRR does provide some relatively limited freight services tied in with outside freight lines, but those services are a very small part of the LIRR's total operations. For example, in 1979 the LIRR provided the people of Long Island and New York City with 275,324 passenger train trips. By contrast, the LIRR operated only 4,472 freight train trips with approximately 41,000 freight cars, almost all of them short and most of them off-peak.

9. Another example is that the LIRR's gross freight revenues in 1979 were approximately $20 million, a figure which should realistically be reduced to $12.1 million when the LIRR's "freight surcharge" revenues, primarily intended to reimburse the LIRR for certain added Railroad Retirement Tax expenses imposed on its *passenger* personnel, are deducted. By contrast, the LIRR's total revenues, for passenges, freight, plus subsidies and surcharges, were over an estimated $300 million, or over 23 times greater than the LIRR's freight revenues.

10. The insignificance of the LIRR's freight operations is highlighted by simply comparing the number of

personnel in each function: the LIRR in 1979, with a total work force of 6,800 people, employed *4,837 operating personnel* to service its vast passenger operations. By contrast, the LIRR employed only *307 operating personnel* to service its entire freight operation.

11. The character of the LIRR has changed dramatically over the years. In 1926, when the federal Railway Labor Act was enacted, the LIRR was a part of the giant interstate Pennsylvania Railroad. The LIRR remained a part of the Pennsylvania until 1966, when the MTA (then known as the Metropolitan Commuter Transportation Authority) acquired the LIRR.

12. The LIRR was a freight and passenger rail carrier; today it is essentially a commuter passenger transit system. Over the past twenty years, the volume of freight carried by the LIRR has plummeted. In 1960, the LIRR handled 122,944 freight cars, or an average of 2364 freight cars each week. By 1970, that figure had dropped to 1409 freight cars each week. By 1979, the LIRR handled only an estimated 788 freight cars each week, and that freight volume continues to drop.

13. But, unlike the freight service, the total number of LIRR passengers has increased over the same period of time. In 1960, the LIRR carried about 64.4 million passengers; in 1970, about 70 million passengers; and in 1979, an estimated 77.3 million passengers.

14. In other words, over the past twenty years while the number of LIRR passengers has actually increased, the LIRR's freight operations have so drastically diminished that today the freight operations are merely a subsidiary, relatively insignificant portion of the LIRR's total system operations. The fact remains: the LIRR is essentially an intrastate commuter passenger system, with relatively insignificant ties to interstate freight traffic.

15. The LIRR is far different than other Class I railroads in the United States precisely because the LIRR, unlike other Class I railroads, carries an insignificant amount of interstate freight. Most Class I railroads are primarily freight carriers.

16. For example, according to the Association of American Railroads ("AAR"), in 1979 an estimated 96.9% of the total passenger and freight revenues for all Class I railroads consisted of freight revenues. By contrast, according to the AAR, in 1979 only 8.7% of the LIRR's passenger and freight revenues consisted of freight revenues. When public subsidies are taken into account, the percentage of revenues to gross revenues and subsidies is reduced to an insignificant 4.3%. This difference—96.9% versus 4.3%—starkly demonstrates that the LIRR is far different than the other railroads designated Class I by the Interstate Commerce Commission.

17. The State of New York recognizes its overwhelming local interest in the LIRR's passenger operations. In 1979, New York plunged approximately $129 million of its own and local funds into the LIRR passenger operations, and used approximately $9 million of scarce federal UMTA entitlements to supplement its own contribution.

18. The metropolitan transportation system, and the LIRR, in particular, could not have survived without state and local government assistance. The LIRR barely survived the post-World War II years, and only as a result of tax relief and indirect subsidies. The State has granted the LIRR tax exemptions since 1950, and has owned the LIRR outright for fourteen years. Over many years, the State and New York City have invested billions of dollars in capital plant in the New York metropolitan transit system. And in 1979 alone, the contribu-

tions of the State and its municipalities to the operating deficits of the great transit network serving the New York City metropolitan area was over $550 million.

19. With a work force of just 6,800 people, the LIRR has a grand total of seventeen "brotherhoods", each of which ordinarily insists upon dealing separately with management. Even when they negotiate as a group, the alliance is only temporary. One of these labor organizations has just five members, another has only twelve. This makes it almost impossible to maintain labor peace, and, as a consequence, both the workers and the public suffer.

20. For example, in the present situation, ten of the labor organizations have settled with the LIRR, but seven others, all of them originally members of the LIRR-wide negotiating panel, have escalated their demands, making imminent a paralyzing strike.

21. As a result of this fractionalization, labor negotiations on the LIRR are a year-round proposition which pre-occupy its operating executives, impairing their ability to perform well where it counts most—in the safe and reliable operation of passenger trains.

22. The dismal record of labor/management amity on the LIRR, since its acquisition by MTA in 1966, has seen two open strikes (one lasting 51 days), job actions too numerous to mention, and five negotiations which resulted in intervention by the President of the United States through Presidential fact finding boards.

23. In sharp contrast, MTA's two sister agencies charged with the responsibility for operating New York City's subway and bus systems have an aggregate of over 34,000 blue-collar employees who are represented for the most part (over 85%) by a single industrial union. The record of this union under municipal ownership dates back to 1940. During this entire period, there has been

just one strike, despite an industry pattern of relatively short collective bargaining contracts—two years maximum.

24. The wages paid to LIRR employees are referred to by the managements of privately-owned railroads, with bitterness, as "champagne" wages. *See* ICC Docket No. 35153, *The Long Island Railroad Company* v. *Ahnapee & Western Railway Co., et al.*, decision of Hearing Examiner Walter D. Matson, served December 24, 1971.

25. A strike is now eminent. Negotiations on a new contract between the LIRR and its seven operating unions, including plaintiff, reached an impasse, and the LIRR's employees struck on December 8, 1979. They returned to work only after a Presidential order on December 14, 1979 ordered them to return to work for a period of 60 days. That 60-day period expired at 12:01 a.m. on Thursday, February 14, 1980. Attempts to resolve the remaining disputes between the LIRR and its unions, including plaintiff, have been unsuccessful.

WHEREFORE, I respectfully request that the Court grant defendants' motion to dismiss the complaint, or, in the alternative, to stay these proceedings, and deny plaintiff's motion for summary judgment and for a stay.

/s/ James B. Huff
JAMES B. HUFF

Sworn to before me March 3, 1980

/s/ Todd M. Brinberg
TODD M. BRINBERG
Notary Public

Commission Expires March 30, 1981

EXCERPT OF THE FINANCIAL AND OPERATING STATISTICS, CLASS I RAILROADS

FINANCIAL AND
OPERATING STATISTICS

CLASS I RAILROADS

for the twelve months ended
Dec. 31, 1978 [SEAL]

statement no. 100

INTERSTATE COMMERCE COMMISSION
BUREAU OF ACCOUNTS

• • • •

6

INCOME STATEMENT, DIVIDENDS AND FINANCIAL RATIOS - BY CARRIERS
FOR THE CALENDAR YEARS ENDED DECEMBER 31, 1971

7

DISTRICT, ROAD AND YEAR	OPERATING REVENUES: FREIGHT (AMOUNT)	FREIGHT (FOREIGN CHANGES)	TOTAL (1) (AMOUNT)	TOTAL (1) (FOREIGN CHANGES)	OPERATING EXPENSES: MAINTENANCE	MAINTENANCE (DEPRECIATION INCLUDED IN MAINTENANCE)	TRANSPORTATION	TOTAL	RATIO TO OPERATING REVENUES: MAINT.	TRANS.	TOTAL OPER. EXP.	INCOME TAXES ON ORDINARY INCOME (3)	NET INCOME	DIVIDENDS DECLARED
TOTAL - UNITED STATES 1971	888,345,815,348	.0	923,146,980,941	.0	99,823,240,687	21,888,840,197	518,178,815,856	821,987,514,344	44.3	43.9	89.0	4135,425,468	4379,118,488	4472,416,142
NATIONAL RAILROAD PASSENGER CORP. 1971	18,875,818	.0	331,187,314	.0	299,483,897	34,999,644	941,488,488	868,488,488	98.8	248.8	288.8	0	-982,388,748	0
EASTERN DISTRICT														
BALTIMORE & OHIO 1971	748,944,948	.0	838,748,888	.0	884,891,843	88,888,738	388,287,488	778,885,648	42.8	42.8	92.7	18,488	88,888,888	12,788,878.
BESSEMER & LAKE ERIE 1971	84,444,941	.0	98,778,874	.0	88,888,883	3,788,888	84,187,488	81,878,289	31.3	28.8	88.4	18,848,184	14,888,488	8,418,478
BOSTON & MAINE (2) 1971	88,818,178	.0	81,588,788	.0	88,888,888	3,888,881	88,888,271	78,284,918	48.8	48.8	188.8	88,888	-2,488,478	0
CHESAPEAKE & OHIO 1971	888,888,878	.0	898,188,788	.0	888,878,848	88,888,888	888,888,188	888,388,898	41.8	41.8	98.8	-8,388,738	88,884,887	88,888,818
CONSOLIDATED RAIL CORP 1971	8,818,888,187	.0	8,838,888,877	.0	1,888,888,848	88,878,888	1,887,788,184	1,988,888,811	38.1	34.8	138.1	-818,848	-881,488,788	0
DELAWARE & HUDSON 1971	88,878,948	.0	88,878,888	.0	88,888,887	2,848,881	88,188,388	88,378,288	38.8	38.4	111.8	0	-11,888,888	0
DETROIT, TOLEDO & IRONTON 1971	88,888,441	.0	78,877,448	.0	81,881,887	2,121,881	88,888,888	87,888,778	44.8	48.8	98.8	0	1,888,847	0
ELGIN, JOLIET & EASTERN 1971	78,888,218	.0	138,288,811	.0	88,818,888	88,884,948	88,888,878	94,788,288	88.8	34.8	78.8	11,817,888	18,887,884	1,888,888
GRAND TRUNK WESTERN 1971	178,481,888	.0	188,878,788	.0	88,888,188	8,888,788	88,888,878	188,884,888	38.8	47.7	97.8	0	7,481,388	0
LONG ISLAND 1971	18,841,948	.0	888,888,888	.0	188,888,888	8,888,881	188,887,888	884,888,888	81.8	84.1	118.8	0	-88,878,788	0
MAINE & WESTERN 1971	888,888,888	.0	887,788,888	.0	188,881,887	78,188,888	488,888,881	888,841,888	37.8	48.8	88.8	88,888,881	188,888,888	87,884,888
PITTSBURGH & LAKE ERIE 1971	88,878,888	.0	88,888,888	.0	18,888,888	8,841,778	88,888,842	38,847,878	88.4	38.8	78.7	8,811,888	7,887,889	8,881,888
WESTERN MARYLAND 1971	88,888,888	.0	88,178,788	.0	88,888,888	8,888,788	88,888,888	88,887,888	81.8	41.8	88.8	8,118,888	7,887,888	1,887,188
SOUTHERN DISTRICT														
CLINCHFIELD 1971	88,778,488	.0	88,888,188	.0	88,848,848	8,881,888	88,887,717	82,848,888	88.8	88.8	84.8	888,788	0	0
FLORIDA EAST COAST 1971	87,877,888	.0	88,888,488	.0	88,887,888	8,878,888	88,888,848	88,818,788	88.8	81.8	78.8	8,878,888	18,128,788	0
GEORGIA S.R.-A.BOARD ORGANIZATION. 1971	0	.0	0	.0	0	0	0	0	.0	.0	.0	0	0	0
ILLINOIS CENTRAL GULF 1971	888,888,888	.0	948,448,888	.0	188,827,888	88,748,888	188,488,888	748,184,888	48.8	88.8	88.8	288,888	-1,888,888	888,888
LOUISVILLE & NASHVILLE 1971	888,888,888	.0	884,488,888	.0	888,888,888	88,888,884	888,887,718	888,788,848	48.8	88.1	87.4	-888,888	-81,188,181	0
SEABOARD COAST LINE 1971	881,881,888	.0	988,888,888	.0	188,878,888	87,848,884	888,888,788	818,188,848	38.8	48.8	88.8	-8,888,888	88,888,878	88,881,888
TENNESSEE 1971	1,888,881,818	.0	1,888,878,487	.0	188,888,888	78,888,888	888,888,881	1,888,888,888	38.8	38.8	88.8	88,888,888	187,888,118	88,888,818

(1) PASSENGER REVENUE DETAIL ON PAGE 8
(2) EXPIRY OF TRUSTEES
SOURCE: FORM R-1: CARRIERS; REPORT OF REVENUES, EXPENSES AND REVENUES-
(3) Includes accruals for federal, state and other income taxes applicable to ordinary income. In prior publications only federal tax accruals were shown.

OPERATING STATISTICS - SELECTED ITEMS

FOR THREE MONTHS ENDED DECEMBER 31, 1975

DISTRICT AND ROAD	AVERAGE MILES OF ROAD OPERATED	TRAIN-MILES	LOCOMOTIVE UNIT-MILES	FREIGHT SERVICE CAR-MILES		FREIGHT SERVICE REVENUE FREIGHT CARS (THOUSANDS)			TRAIN HOURS	FREIGHT SERVICE AVERAGE NO. OF LOCO UNITS ASSIGNED TO ROAD SERVICE			AVERAGE NUMBER OF FREIGHT CARS IN LINE			PASSENGER SERVICE TRAIN-MILES	PASSENGER SERVICE CAR-MILES	LOCOMOTIVE UNIT-MILES	TRAIN HOURS	AVERAGE NUMBER OF LOCOMOTIVE UNITS
				LOADED	EMPTY	INCLUDING LOCOMOTIVES	EXCLUDING LOCOMOTIVES	NOT MOVING UNDER OWN POWER		DIESEL	STEAM	OTHER	HOME	FOREIGN	TOTAL					
NATIONAL RAILROAD PASSENGER CORP.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	32,491,241	234,794	49,261,938	686,853	176
EASTERN DISTRICT																				
SOUTHERN DISTRICT																				
WESTERN DISTRICT																				

(1) REPORT BY TRUSTEES

SOURCE: FORM 20-A, TRACK AND YARD SERVICES AND FORM 20-C, MOTIVE POWER AND CAR EQUIPMENT.